

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Eugene H. Upton, in individual and
representative capacity as trustee of
The Upton Family Trust;

Cristobal Cabrera;

Wok's On Express, Inc., a
California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Eugene H. Upton, in individual and representative capacity as trustee of The Upton Family Trust; Cristobal Cabrera; Wok's On Express, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual

1 dexterity impairments. He uses a wheelchair for mobility and has a specially
2 equipped van.

3 2. Defendant Eugene H. Upton, in individual and representative capacity
4 as trustee of The Upton Family Trust, owned the real property located at or
5 about 154 W El Camino Real, Sunnyvale, California and 156 W El Camino
6 Real, Sunnyvale, California, between October 2020 and February 2021.

7 3. Defendant Eugene H. Upton, in individual and representative capacity
8 as trustee of The Upton Family Trust, owns the real property located at or
9 about 154 W El Camino Real, Sunnyvale, California and 156 W El Camino
10 Real, Sunnyvale, California, currently.

11 4. Defendant Cristobal Cabrera owned Tacos Jalapa located at or about
12 154 W El Camino Real, Sunnyvale, California, between October 2020 and
13 February 2021.

14 5. Defendant Cristobal Cabrera owns Tacos Jalapa located at or about 154
15 W El Camino Real, Sunnyvale, California, currently.

16 6. Defendant Wok's On Express, Inc. owned Wok's On Express located at
17 or about 156 W El Camino Real, Sunnyvale, California, between October
18 2020 and February 2021.

19 7. Defendant Wok's On Express, Inc. owns Wok's On Express located at or
20 about 156 W El Camino Real, Sunnyvale, California, currently.

21 8. Plaintiff does not know the true names of Defendants, their business
22 capacities, their ownership connection to the property and business, or their
23 relative responsibilities in causing the access violations herein complained of,
24 and alleges a joint venture and common enterprise by all such Defendants.
25 Plaintiff is informed and believes that each of the Defendants herein is
26 responsible in some capacity for the events herein alleged, or is a necessary
27 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
28 the true names, capacities, connections, and responsibilities of the Defendants

are ascertained.

JURISDICTION & VENUE:

9. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

10. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

12. Plaintiff went to Tacos Jalapa and Wok's On Express ("Restaurants") in October 2020 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in October 2020, but he wanted to return and patronize the business several times but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

13. The Restaurants are facilities open to the public, places of public accommodation, and business establishments.

14. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible door hardware in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

15. The Restaurants provide door hardware to their customers but fail to

1 provide wheelchair accessible door hardware.

2 16. A problem that plaintiff encountered was that the entrance door
3 hardware had a pull bar style handle that required tight grasping to operate.

4 17. Plaintiff believes that there are other features of the door hardware that
5 likely fail to comply with the ADA Standards and seeks to have fully compliant
6 door hardware for wheelchair users.

7 18. On information and belief, the defendants currently fail to provide
8 wheelchair accessible door hardware.

9 19. Additionally, on the date of the plaintiff's visit, the defendants failed to
10 provide wheelchair accessible dining surfaces in conformance with the ADA
11 Standards as it relates to wheelchair users like the plaintiff.

12 20. The Restaurants provide dining surfaces to their customers but fail to
13 provide wheelchair accessible dining surfaces.

14 21. One problem that plaintiff encountered was the lack of sufficient knee
15 or toe clearance under the outside dining surfaces for wheelchair users.

16 22. Plaintiff believes that there are other features of the dining surfaces that
17 likely fail to comply with the ADA Standards and seeks to have fully compliant
18 dining surfaces for wheelchair users.

19 23. On information and belief, the defendants currently fail to provide
20 wheelchair accessible dining surfaces.

21 24. Finally, on the date of the plaintiff's visit, the defendants at Wok's On
22 Express failed to provide wheelchair accessible restrooms in conformance
23 with the ADA Standards as it relates to wheelchair users like the plaintiff.

24 25. Wok's On Express provides restrooms to its customers but fails to
25 provide wheelchair accessible restrooms.

26 26. One problem that plaintiff encountered was the lack of sufficient wrap
27 under the restroom sink to protect against burning contact.

28 27. Plaintiff believes that there are other features of the restroom that likely

1 fails to comply with the ADA Standards and seeks to have fully compliant
2 restrooms for wheelchair users.

3 28. On information and belief, the defendant at Wok's On Express currently
4 fails to provide wheelchair accessible restrooms.

5 29. These barriers relate to and impact the plaintiff's disability. Plaintiff
6 personally encountered these barriers.

7 30. As a wheelchair user, the plaintiff benefits from and is entitled to use
8 wheelchair accessible facilities. By failing to provide accessible facilities, the
9 defendants denied the plaintiff full and equal access.

10 31. The failure to provide accessible facilities created difficulty and
11 discomfort for the Plaintiff.

12 32. The defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 33. The barriers identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove. Moreover, there are numerous
19 alternative accommodations that could be made to provide a greater level of
20 access if complete removal were not achievable.

21 34. Plaintiff will return to the Restaurants to avail himself of its goods or
22 services and to determine compliance with the disability access laws once it is
23 represented to him that the Restaurants and their facilities are accessible.
24 Plaintiff is currently deterred from doing so because of his knowledge of the
25 existing barriers and his uncertainty about the existence of yet other barriers
26 on the site. If the barriers are not removed, the plaintiff will face unlawful and
27 discriminatory barriers again.

28 35. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are
 2 other violations and barriers on the site that relate to his disability. Plaintiff will
 3 amend the complaint, to provide proper notice regarding the scope of this
 4 lawsuit, once he conducts a site inspection. However, please be on notice that
 5 the plaintiff seeks to have all barriers related to his disability remedied. See
 6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 7 encounters one barrier at a site, he can sue to have all barriers that relate to his
 8 disability removed regardless of whether he personally encountered them).

9
 10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint.

16 37. Under the ADA, it is an act of discrimination to fail to ensure that the
 17 privileges, advantages, accommodations, facilities, goods and services of any
 18 place of public accommodation is offered on a full and equal basis by anyone
 19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 20 § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,
 22 or procedures, when such modifications are necessary to afford
 23 goods, services, facilities, privileges, advantages, or
 24 accommodations to individuals with disabilities, unless the
 25 accommodation would work a fundamental alteration of those
 26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is
 28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

defined by reference to the ADA Standards.

c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

38. When a business provides facilities such as door hardware, it must provide accessible door hardware.

39. Here, accessible door hardware has not been provided in conformance with the ADA Standards.

40. When a business provides facilities such as dining surfaces, it must provide accessible dining surfaces.

41. Here, accessible dining surfaces have not been provided in conformance with the ADA Standards.

42. When a business provides facilities such as restrooms, it must provide accessible restrooms.

43. Here, accessible restrooms have not been provided in conformance with the ADA Standards.

44. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

45. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

46. Here, the failure to ensure that the accessible facilities were available

1 and ready to be used by the plaintiff is a violation of the law.

2
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
5 Code § 51-53.)

6 47. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
9 that persons with disabilities are entitled to full and equal accommodations,
10 advantages, facilities, privileges, or services in all business establishment of
11 every kind whatsoever within the jurisdiction of the State of California. Cal.
12 Civ. Code §51(b).

13 48. The Unruh Act provides that a violation of the ADA is a violation of the
14 Unruh Act. Cal. Civ. Code, § 51(f).

15 49. Defendants’ acts and omissions, as herein alleged, have violated the
16 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
17 rights to full and equal use of the accommodations, advantages, facilities,
18 privileges, or services offered.

19 50. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
20 discomfort or embarrassment for the plaintiff, the defendants are also each
21 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
22 (c).)

23 51. Although the plaintiff encountered frustration and difficulty by facing
24 discriminatory barriers, even manifesting itself with minor and fleeting
25 physical symptoms, the plaintiff does not value this very modest physical
26 personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.


2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: April 27, 2021

CENTER FOR DISABILITY ACCESS

By: 

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Attorney for plaintiff